

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOW & DRAPE, INC.,

Plaintiff,

~ against ~

TRULY COMMERCE INC.; and
DAY TO DAY IMPORTS INC.,

Defendants.
----- x

Docket No.: **1:18-cv-05066**

DEFENDANT DAY TO DAY
IMPORTS INC.'s ANSWER

Defendant **DAY TO DAY IMPORTS INC.** by and through its attorney, hereby
Answers the First Amended Complaint filed by Plaintiff and admits, denies, and alleges
as follows:

NATURE OF THE ACTION

1. Answering Paragraph 1, Defendant Day to Day Imports Inc. is
without sufficient information or belief to admit or deny the allegations of this paragraph.

THE PARTIES, JURISDICTION AND VENUE

2. Answering Paragraph 2, Defendant Day to Day Imports Inc. is
without sufficient information or belief to admit or deny the allegations of this paragraph.

3. Answering Paragraph 3, Defendant Day to Day Imports Inc. is
without sufficient information or belief to admit or deny the allegations of this paragraph.

4. Answering Paragraph 3, Defendant Day to Day Imports Inc. admits
the allegations of this paragraph.

5. Answering Paragraph 5, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

6. Answering Paragraph 6, the paragraph calls for a legal conclusion to which no response is required.

JURY DEMAND

7. Answering Paragraph 7, the paragraph calls for a legal conclusion to which no response is required.

FACTUAL BACKGROUND

8. Answering Paragraph 8, Defendant Day to Day Imports Inc. is without sufficient information or belief to admit or deny the allegations of this paragraph.

9. Answering Paragraph 9, Defendant is without sufficient information or belief to admit or deny the allegations in the first sentence of the paragraph and denies the allegations in the second sentence.

10. Answering Paragraph 10, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

11. Answering Paragraph 11, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

12. Answering Paragraph 12, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

13. Answering Paragraph 13, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

FIRST CAUSE OF ACTION
(Breach of Contract)

14. Answering Paragraph 14, the paragraph calls for a legal conclusion to which no response is required.

15. Answering Paragraph 15, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

16. Answering Paragraph 16, Defendant Day to Day Imports Inc. denies the allegations of this paragraph and denies that Plaintiff had any agreement with Day to Day Imports Inc. Answering Defendant.

17. Answering Paragraph 17, denies the allegations of this paragraph.

18. Answering Paragraph 18, denies the allegations of this paragraph.

SECOND CAUSE OF ACTION
(Negligence)

19. Answering Paragraph 19, the paragraph calls for a legal conclusion to which no response is required.

20. Answering Paragraph 20, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

21. Answering Paragraph 21, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

22. Answering Paragraph 22, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

23. Answering Paragraph 23, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

24. Answering Paragraph 24, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

25. Answering Paragraph 25, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

THIRD CAUSE OF ACTION
(Unjust Enrichment)

26. Answering Paragraph 26, the paragraph calls for a legal conclusion to which no response is required.

27. Answering Paragraph 27, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

28. Answering Paragraph 28, Defendant Day to Day Imports Inc. denies the allegations of this paragraph.

With respect to the “WHEREFORE” Clauses, the Defendant Day to Day Imports Inc. respectfully denies that Plaintiff is entitled to the relief prayed for, or any relief at all, and based thereon respectfully requests the Court deny Plaintiff the relief prayed for, or any relief at all, and the claims of the Plaintiff be adjudged against Plaintiff and in favor of Defendant.

AS AND FOR AFFIRMATIVE DEFENSES TO THE CLAIMS SET FORTH IN THE COMPLAINT, DEFENDANT ALLEGES, UPON INFORMATION AND BELIEF, AS FOLLOWS:

First Affirmative Defense

29. Plaintiffs' First Amended Complaint ("FAC") fails to state facts sufficient to constitute a claim for relief against Defendant and merely states conclusory allegations upon information and belief.

Second Affirmative Defense

30. If any loss or damage did occur which is the subject of Plaintiffs' complaint, none of said loss or damage was caused or contributed to by any fault or neglect on the part of Defendant.

Third Affirmative Defense

31. This Answering Defendant and Plaintiff were never in privity of contract, and Plaintiff's lack of privity is fatal to the allegations against this Answering Defendant in its First Amended Complaint.

Fourth Affirmative Defense

32. Even if there was an agreement between this Answering Defendant and Plaintiff, which there was not, Plaintiff did not give any consideration for this alleged agreement, so the alleged agreement is null and void as a matter of law.

Fifth Affirmative Defense

33. Attorney's fees are not recoverable against this Answering Defendant.

WHEREFORE, Defendant respectfully requests that (1) the Plaintiffs have and recover nothing in this action; (2) that the action be dismissed with prejudice pursuant to law; (3) that the costs of this action be taxed against the Plaintiffs pursuant to law; (4) Defendant be awarded his attorneys' fees incurred to the degree allowed; and (5) the Court grant to Defendant such other further relief as may seem just and proper

DATED: **MAY 2, 2019**

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Baruch S. Gottesman", is written over a light blue rectangular background.

Baruch S. Gottesman, Esq.
185-12 Union Turnpike
Fresh Meadows, NY 11366
Attorney for Defendant
Day to Day Imports Inc.

Served via ECF on all counsel who have appeared